

BEFORE THE  
BOARD OF DIRECTORS OF SANTIAGO CHARTER MIDDLE SCHOOL  
STATE OF CALIFORNIA

In the Matter of the Accusation Against  
April Keller, Jon R. Ruffridge, Brooke  
Khan, and Elisha Murillo,  
  
Respondents.

OAH No. 2011031476

**PROPOSED DECISION**

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on May 2, 2011, in Orange, California.

Sarah Kollman, Attorney at Law, Law Offices of Middleton, Young & Minney, LLP, represented Santiago Charter Middle School (Santiago).

Brenda Sutton-Wills, Staff Attorney, California Teachers Association, represented Respondents April Keller (Keller), Jon R. Ruffridge (Ruffridge), Brooke Khan (Khan), and Elisha Murillo (Murillo), all of whom were present throughout the hearing.

Santiago has decided to reduce or discontinue certain services and has given Respondents notice of its intent not to reemploy them for the 2011-2012 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

Oral and documentary evidence was received and argument heard. The record was closed and the matter submitted on May 2, 2011.

The hearing of this matter was previously continued from April 20, 2011 to May 2, 2011, at the request of Respondents. Pursuant to Education Code<sup>1</sup> section 44949, subdivision (e), the deadlines set forth in section 44949, subdivision (c), and 44955, subdivision (c), are extended by 12 days.

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<sup>1</sup> All further statutory references are to the Education Code.

### FACTUAL FINDINGS

1. Mary Henry filed the Accusation in her official capacity as Principal of Santiago.
2. Respondents are certificated employees of Santiago.
3. Santiago is a charter school. Charter schools are, with certain exceptions not relevant here, exempt from laws governing school districts, under Education Code section 47610. Nevertheless, Santiago has agreed to comply with the requirements of Sections 44949 and 44955.
4. On March 11, 2011, the Governing Board (Board) of Santiago adopted Resolution No. 23-11 (Exhibit 1). That resolution recites that, “because of the financial constraints resulting from revenue being insufficient to maintain the current levels of programs and necessary program changes resulting therefrom,” the Board determines to reduce or eliminate the following particular kinds of services (PKS) for the 2011-2012 school year.

<u>Services</u>	<u>FTE<sup>2</sup></u>
Technology	1.0
Social Science/History	1.0
Physical Education	1.0
English	1.0
Counselor	0.5
<b>Total</b>	<b>4.5</b>

5. The resolution reflects that the Board further determined that due to the reduction or discontinuance of particular kinds of services, the corresponding number of certificated employees of Santiago would be terminated at the end of the 2010-2011 school year. The Board directed the Principal or her designated representative to determine which employees’ services would not be required for the 2011-2012 school year as a result of this reduction in services, and directed the Principal to send appropriate notices to all employees affected by virtue of the reduction and elimination of particular kinds of services.

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<sup>2</sup> Full-time equivalent position.

6. On or before March 15, 2011, Santiago provided written notice to the affected certificated employees, under sections 44949 and 44955, that their services would not be required for the 2011-2012 school year. Each written notice stated that the Board had adopted a resolution reducing or eliminating certain certificated services for the 2011-2012 school year, and attached a copy of Resolution No. 23-11, thereby identifying the Board's reasons and the particular kinds of services being reduced or eliminated. Respondents thereafter timely filed requests for hearing, seeking a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

7. On April 5, 2011, Santiago filed and served the Accusation and related documents on Respondents. Respondents thereafter filed timely notices of defense.

8. All prehearing jurisdictional requirements have been met.

9. The services set forth in Factual Finding 4 are particular kinds of services that may be reduced or discontinued within the meaning of section 44955.

10. The Board took action to reduce the services set forth in Factual Finding 4, because of severe budget cuts of future state funding. The decision to reduce or discontinue particular kinds of services in light of the uncertainty surrounding future state funding is neither arbitrary nor capricious, but is rather a proper exercise of Santiago's discretion.

11. The Board adopted a "Tie-Breaker Resolution," containing criteria to establish seniority dates for individuals who first rendered paid service on the same date. Santiago did not need to utilize the criteria in order to determine the order of layoff.

#### *Seniority List*

12. Santiago determined the order of termination of the employees serving in the positions to be reduced or discontinued by creating a seniority list.<sup>3</sup> (Exhibit 2) The seniority list identified each employee's first date of paid service in a probationary position. The Orange Unified School District (OUSD) is Santiago's oversight district. Santiago recognizes seniority from OUSD. Seniority dates were established based on hire date into OUSD or Santiago, whichever came first. If there was a break in service, seniority was established by the rehire date. Respondents' argument that Santiago should have only credited seniority based on service at Santiago and not at OUSD is not persuasive as they have not shown that Santiago's recognition of service to OUSD constitutes an abuse of discretion.

13. Keller and Murillo challenged the seniority dates assigned to them. Keller asserted that her seniority date should be August 28, 2006, and not August 27, 2007, as indicated in the seniority list. Murillo asserted that her seniority date should be October 2, 2006, and not August 27, 2007, as indicated in the seniority list. Even if both seniority dates

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<sup>3</sup> Respondent Brooke Khan is on the seniority list as Brooke Schwartz.

were adjusted to the asserted dates, it would not affect the order of termination; therefore, it is not necessary to address the issue in the instant decision.

### *Bumping Challenges*

14. Murillo is subject to layoff because she is the most junior physical education teacher. Murillo asserted that she should be able to bump Kathryn Napoli (Napoli). Napoli's seniority date is August 25, 2008. Napoli is not subject to layoff since math is not one of the identified particular kinds of service that the Board determined to reduce or eliminate. Napoli holds a single subject math credential and currently teaches prealgebra and algebra. (Exhibit A) Murillo testified that she could teach Napoli's position. Murillo holds a clear multiple subject credential that she received in the year 2000, and also holds a supplemental authorization in physical education. Her credential does not allow her to teach single subjects unless students are organized into certain core classes, and the credential does not authorize the teaching of geometry. She currently teaches physical education. She has never taught math. Accordingly, Murillo is not certificated to teach the classes that Napoli was retained to teach and may not bump Napoli.

15. Ruffridge currently holds a technology teaching position and is therefore subject to layoff. Ruffridge holds a single subject computer concepts and applications credential as well as a single subject music credential. Ruffridge's seniority date is August 25, 2008. He asserted that he should be able to bump into James Lorbeer's (Lorbeer) music position. Lorbeer holds a music credential. Ruffridge challenged Lorbeer's seniority date of August 27, 2007, since Lorbeer was hired by Santiago in October 2010; however, the seniority date of August 27, 2007 is valid in as much as that is the date Lorbeer was rehired by OUSD and Santiago honors OUSD's rehire date with respect to seniority. Lorbeer is more senior to Ruffridge, and therefore, Ruffridge cannot bump into Lorbeer's music position.

### *Other Findings*

16. The reduction of services set forth in Factual Finding 4, given the possible reduction in State funding and Santiago's need to remain solvent to serve its students, is related to the welfare of Santiago and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board.

17. Santiago did not retain any certificated employee junior to Respondents to render a service that Respondents are certificated and competent to render.

## LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists under sections 44949 and 44955, by reason of Factual Findings 1 through 8.

2. The services identified in Factual Finding 4 are particular kinds of services that may be reduced or discontinued under Education Code section 44955, by reason of Factual Findings 4 and 9.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in Factual Finding 4, which cause relates solely to the welfare of Santiago and its pupils, by reason of Factual Findings 1 through 17, and Legal Conclusions 1 and 2.

4. There is no requirement in the Education Code that would mandate Santiago to reorganize its schedule to allow Murillo to teach math. It is allowed flexibility in establishing classes and in making assignments. In *Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4<sup>th</sup> 334, the court held that school districts have discretion to define positions and the manner in which they will be taught as long as it is done in good faith. In determining whether the decision of a school board is reasonable or in good faith, its action is measured by the standard set by reason and reasonable people, bearing in mind that such as standard may permit a difference of opinion on the same subject. (*Campbell v. Abbott* (1978) 76 Cal.App.3d 796, 808.) Santiago is not required to reorganize its classes so that Murillo may teach a core class and its not doing so is not unreasonable.

5. Cause exists to terminate the services of Respondents April Keller, Jon R. Ruffridge, Brooke Khan, and Elisha Murillo, by reason of Factual Findings 1 through 17, and Legal Conclusions 1 through 4.

### ORDER

The Accusation is sustained, and the Board may give final notice to Respondents April Keller, Jon R. Ruffridge, Brooke Khan, and Elisha Murillo, that their services will not be required for the 2011-2012 school year due to the reduction of particular kinds of services.

DATED: May 19, 2011

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JANKHANA DESAI  
Administrative Law Judge  
Office of Administrative Hearings